IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7713 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

BACHIBAI JACOB CHAKI W/O DECD.JACOB ALLARKHA CHAIKI

Appearance:

1. First Appeal No. 7713 of 1999

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

MR SURESH M SHAH for Respondents No. 1-5

MR MEHUL S SHAH for Respondents No. 1-5

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 28/12/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant, New India Assurance Company Limited, in this appeal which is filed under Section 30 of the Workmen's Compensation Act, 1923, ('Act' for short), has challenged the judgment and award dated October 7, 1999 passed by the Ex-Officio Commissioner for Workmen's Compensation, Bharuch, in Workmen's Compensation (Fatal) Application No.1 of 1995.

2. Respondents Nos.1 to 4 are heirs of deceased workman, Jacob Allarakha Chaki. The deceased workman was in the employment of respondent No.5, Natha Kainya Ayer. The deceased was working as driver in the truck bearing RTO registration No.GT-12-T-7602. The said truck was insured with the appellant-Insurance Company. The policy of the insurance was bearing No.31121400-21218 and its validity period was from August 26, 1993 to August 25, 1994. On January 5, 1994, the deceased workman had driven the truck from Kollahapur and had come near Mandva village. He had parked his truck on the side of the road. Around 9 p.m. he had gone to answer the call of nature. While the deceased workman was trying to cross the road to reach his truck, at that time, one truck had knocked him down, as a result of which, he had sustained serious injuries and had expired after some time. The respondents Nos. 1 to 4 who are heirs and legal representatives of the deceased claimed compensation by filing Workmen's Compensation (Fatal) Application No.1 of 1995 before the Commissioner for Workmen's Compensation, Bharuch, against the respondent No.5 and the appellant-Insurance Company.

3. The Commissioner for Workmen's Compensation, Bharuch, has awarded compensation of Rs.1,97,060 to the respondents Nos.1 to 4 along with penalty of 50% to be paid by respondent No.5. The Commissioner for Workmen's Compensation, Bharuch, has also awarded interest at the rate of 12% from the date of incident till realisation and cost of the application quantified at Rs.600/-.

4. The appellant-Insurance Company has challenged the award of the Commissioner for Workmen's Compensation, Bharuch, in this appeal. There is no dispute on the factual position about the deceased having died during the course of employment and that the deceased was getting salary of Rs.2750/- per month. The question involved in this appeal is whether the Commissioner for Workmen's Compensation was right in awarding compensation

as per the amended provision of Section 4-A of the Act introduced by Act 30 of 1995 which came into force from September 15, 1995 ? The incident in question had taken place on January 5, 1994. Another question, which is involved in this appeal, is whether the Commissioner for Workmen's Compensation was justified in awarding interest at the rate of 12% on the amount of compensation because, as per the unamended provision of the Act, the interest to be awarded on the amount of compensation was at the rate of 6%.

5. The learned counsel for the respondents No.1 to 4-original claimants has submitted that the Workmen's Compensation Act is a beneficial legislation and should be construed in favour of the claimants. It is further submitted that the Commissioner for Workmen's Compensation was justified in awarding compensation as per the amended Act which came into force with effect from September 15, 1995 because at the time passing of the award, the amended provision of the Act had already come into force. It is further submitted that the liability to pay compensation was already created by the unamended Act and, by the Amending Act, only rate of quantification of compensation was enhanced and, therefore, the claimants would be entitled to claim compensation at the enhanced rate as per the amended Act. In short, it is submitted by the learned counsel for the respondents Nos. 1 to 4 that the amended Act would apply retrospectively.

6. It is true that two-Judge Bench of the Supreme Court in the case of Rathi Menon vs. Union of India, reported in AIR 2001 Supreme Court 1333, has ruled that, while awarding compensation to the claimant under Section 124-A of the Railways Act, 1989, the Tribunal must consider what the Rules prescribed at the time of making the order for payment of compensation and not at the time of the accident. Before the Supreme Court, reliance was placed by the Union of India on the earlier decision of the Supreme Court in the case of Pratap Narain Singh Deo vs. Sriniwas Sabata, reported in AIR 1976 Supreme Court p.222 wherein it was held that, "in a claim under the Workmen's Compensation Act, the employer became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. It is, therefore, futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19." The Supreme Court, in paragraph 32, distinguished the provisions of Railways Act as against the provisions of the Workmen's

Compensation Act and held as under:

"32. The scheme of the provision under the W.C. Act is materially different from the scheme indicated in Chapter XIII of the Railways Act. In the former compensation payable is fixed in the Act itself through the schedule incorporated thereto. Section 4 of the W.C. Act shows that such compensation is to be linked with the monthly wages of the workman concerned. It also provides that the liability to pay compensation on the employer would arise not when the Commissioner passes the order but on the date of sustaining the injury itself. A provision is made in Section 4A of the W.C. Act that where any employer is in default of paying the compensation due within one month the Commissioner shall direct the employer to pay not only interest but in appropriate cases a penalty ranging up to 50% of the amount payable. The said scheme cannot be equated with the scheme in Chapter XIII of the Railways Act, as the principles have differences."
(Emphasis supplied)

In view of the principles laid down by the Supreme Court in the case of Rathi Menon (supra), the claimants would not get the compensation on the basis of the amended Act because when the accident had taken place, the amended Act had not come into force.

7. The larger Bench of the Supreme Court in the case of Pratap Narain Singh Deo vs. Shrinivas Sabata, reported in AIR 1976 Supreme Court 222, has, in terms, held that the employer becomes liable to pay the compensation as soon as the workman sustains injury or death of the workman has taken place. Therefore, in our view, as per the principles laid down in the case of Pratap Narain Singh Deo (supra), the crucial date would be the date of death and not the date on which the award was passed. Section 4, as it stood when the accident took place before the amended Act, provided in the Explanation that, "where monthly wage of a workman exceeds Rs.1000, his monthly wage for the purpose of clause A and clause B would be deemed to be Rs.1000 only." As per the unamended Act, as it was applicable on the date of death, the amount of compensation has to be assessed equal to 40% of the monthly wage of the deceased workman multiplied by the relevant factor. Similarly, as per the unamended Act, the rate of interest on the amount of compensation was 6% and not 12% as awarded by the Commissioner for Workmen's Compensation.

8. The three-Judge Bench of the Supreme Court in the

case of Kerala State Electricity Board vs. Valsala K. and another, reported in (1999) 8 Supreme Court Cases 254, while following the principles laid down by the larger Bench of the Supreme Court in the case of Pratap Narain Singh Deo (supra), has also ruled that the relevant date for determining the rights and liabilities of the parties is the date of the accident and not the date of adjudication of the claim. It is also ruled by the Supreme Court that the cases where accidents took place prior to, although decided subsequent to September 15, 1995, did not attract the enhanced rates introduced by the amendment which came into force with effect from September 15, 1995. The Supreme Court, in the case of Valsala K (supra) in terms has observed in paragraph 4 that, "the two-Judge Bench in Neelakandan case [(1999) 8 Supreme Court Cases 254] however did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo case (AIR 1976 SC 222) as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Singh Deo case, the view expressed by the two-Judge Bench in Neelakandas case is not correct."

9. In view of the principles laid down by the larger Bench in Pratap Narain Singh Deo case which were followed in the case of Kerala State Electricity Board vs. Valsala K. and another [(1999) 8 Supreme Court Cases 254], in our view, there cannot be any doubt that the compensation is to be awarded and is to be calculated at the rate provided in the unamended Act when the accident had taken place and not at the enhanced rate introduced by the amendment when the claim was adjudicated by the Commissioner.

10. The submission of the learned counsel for the respondents Nos.1 to 4 (original claimants) that the amending Act would have retrospective effect does not deserve any merit and is hereby rejected. The provision of the Act has to be applied as the law stood on the date of the accident and not on the date of adjudication. The Rules of Interpretation of Statutes provide that unless it is expressly shown that the Act would be having retrospective effect, it would be applicable from the date of its coming into force and, threfore, it will have prospective effect only. It is not provided in the Amendment Act 30 of 1995 which came into force with effect from September 15, 1995, that the enhanced rate of compensation would be applicable retrospectively. Hence, in our view, the enhanced rate, as provided by the Amendment Act 30 of 1995 will have prospective effect and

not retrospective effect, as sought to be contended by the learned counsel for the respondents-claimants.

11. As a result of foregoing discussion, and in view of the principles laid down by the Supreme Court in the cases referred to above, the appeal deserves to be allowed. The award of the Commissioner will have to be modified to the extent that the compensation awarded to the claimants will have to be calculated on the basis of unamended Act as it stood on January 5, 1994. The claimants will be entitled to interest at the rate of 6% per annum as provided in the unamended Act and not at the rate of 12% per annum. Therefore, the award of the Commissioner shall stand modified accordingly. It is clarified that the appellant-Insurance Company shall not be liable to pay the amount of penalty and interest as per the decision of the Supreme Court in the case of Ved Prakash Garg vs. Premi Devi and others, reported in AIR 1997 Supreme Court 3584. The excess amount of compensation deposited by the appellant-Insurance Company shall be refunded.

12. The appeal is allowed accordingly. The award dated October 7, 1999 passed by the Ex-Officio Commissioner for Workmen's Compensation, Bharuch, in Workmen's Compensation (Fatal) Application No.1 of 1995, stands modified to the above extent. There shall no order as to costs.

December 28,2001 (M.H. Kadri, J.)

(H.H. Mehta, J.)

(swamy)